

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

MICHAEL O'CALLAGHAN,

Plaintiff,

v.

**CITY OF PORTLAND, MAYOR TED
WHEELER, POLICE CHIEF DANIELLE
OUTLAW, PACIFIC PATROL
SERVICES, and RAPID RESPONSE BIO
CLEAN,**

Defendants.

Case No. 3:18-cv-1641-YY

ORDER

Michael H. Simon, District Judge.

United States Magistrate Judge Youlee Yim You issued Findings and Recommendation in this case on January 24, 2019. ECF 50. Magistrate Judge You recommended that the City of Portland's Motion to Dismiss under 28 U.S.C. § 1915(e)(e) be denied.

Under the Federal Magistrates Act ("Act"), the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C.

§ 636(b)(1). If a party files objections to a magistrate judge’s findings and recommendations, “the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3).

For those portions of a magistrate judge’s findings and recommendations to which neither party has objected, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) (“There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate’s report to which no objections are filed.”); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (holding that the court must review *de novo* magistrate judge’s findings and recommendations if objection is made, “but not otherwise”). Although in the absence of objections no review is required, the Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that “[w]hen no timely objection is filed,” the Court review the magistrate judge’s recommendations for “clear error on the face of the record.”

The City of Portland timely filed an objection (ECF 56), to which Plaintiff failed to respond. The City of Portland objects to the portion of Magistrate Judge You’s recommendation finding that Plaintiff’s allegation of poverty is not untrue.

Magistrate Judge You held a hearing on the City of Portland’s Motion to Dismiss under 28 U.S.C. § 1915(e) to address the City’s allegations and concerns that Plaintiff’s allegation of poverty in his Application to Proceed *In Forma Pauperis* is untrue. The City of Portland relied in part on documents that it had previously submitted in a Ninth Circuit appeal of another case involving Plaintiff, in which Plaintiff was also granted leave to proceed *in forma pauperis*.

At the hearing, Plaintiff responded to the City's allegations that Plaintiff's claims of poverty are untrue. Plaintiff stated, consistent with his sworn *in forma pauperis* application, that he has received no money from any trust funds in several years and that he has not received any income from his family's property in Hawaii since 2013 when he received \$54,000 from the sale of half of the property. He also stated that he has not received payments from his family's contract account in several years and that he has spent the \$23,000 he received from exchange traded funds in 2016. The determination of whether a plaintiff is entitled to *in forma pauperis* status is within the Court's discretion. *Cal. Men's Colony v. Rowland*, 939 F.2d 854, 858 (9th Cir. 1991). The Court agrees with Magistrate Judge You that Plaintiff was able to provide an explanation as to each of the sources of income that the City of Portland claimed that he failed to report on his *in forma pauperis* application.

The Court ADOPTS the Findings and Recommendation (ECF 50) and the City of Portland's Motion to Dismiss under 28 U.S.C. § 1915(e) (ECF 19) is DENIED.

IT IS SO ORDERED.

DATED this 20th day of February, 2019.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge